



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
LOLITA W. HAMILTON }

For Appellant: Lolita W. Hamilton, in pro. per,
For Respondent: 'Burl D. Lack, Chief Counsel;
Israel Rogers, Associate Tax Counsel...

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Lolita W. Hamilton to a proposed assessment of additional personal income tax in the amount of \$14. 21 for the year 1961.

Appellant and her husband, Jesse A. Hamilton, resided together until November 1951. Since that time they have been separated, although no decree of divorce or of separate maintenance has ever been issued. During the period of separation, appellant raised the three children of the marriage. In her return for 1961 appellant claimed a \$3,000 personal exemption as a head of a household.

Respondent issued a notice of proposed assessment for 1961, in which appellant was denied the claimed exemption. Instead, respondent allowed appellant a \$1,500 personal exemption on the ground that appellant was a married woman filing a separate return and there was no agreement between appellant and her husband providing' for a different division of the \$3,000 exemption allowed a married couple, (Cal, Admin. Code, tit.. 18, reg. 17181(a), subd. (2).)

The question presented is whether appellant is an unmarried person within the meaning of sections 17042 and 17043 of the Revenue and Taxation Code, which define the term "head of a household." Section 17042 states' in part that

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... an individual shall be considered a head of a household if, and only if, such Individual is not married ...

Further. refining the definition, section 17043 provides:

For purposes of Section 17042 -

(b) An individual who is legally separated from his spouse under a final decree of divorce or a decree of separate maintenance shall not be considered as married ...

According to the Civil Code of California, marriage" . . . is dissolved only by the death of one of the parties or by the judgment of a court of competent jurisdiction decreeing a divorce. (Civ. Code, § 90.) Section 17043 of the Revenue and Taxation Code extends the general law so that, for the tax purposes at hand, a marriage may be considered dissolved by a decree of separate maintenance. The requirement of a decree is too explicit in the statute to allow room for interpretation in appellant's favor. (See Wesemann v. Commissioner, 298 F.2d 527, construing the federal counterpart of section 17043.) Since appellant has not obtained a decree, we have no alternative but to conclude that she does not qualify as a head of a household.

O R D E R .

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Lolita W. Hamilton against a proposed assessment of additional personal income tax in the amount of \$14.21 for the year 1961 be and the same is hereby sustained,

Done at Sacramento, California, this. 27th day of October, 1964, by the State Board of Equalization,

<u>Paul R. Leake</u>	Chairman
<u>John W. Lynch</u>	Member
<u>Julius Chan</u>	Member
<u> </u>	Member
<u> </u>	Member

Attest: , Secretary